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Dear Chris

Thank you for your letter of 10 July detailing the outstanding questions from the final evidence session on the Historic Environment (Wales) Bill.

I am happy to provide the following answers.

### General questions

- 1. How do you respond to concerns from stakeholders that the recovery of expenses for urgent works is not comparable with the recovery of mortgage debts (as the Bill suggests), as the latter is reliant upon a contractual arrangement, which does not apply in the case of urgent works?**

Section 30 of the Bill provides for the recovery of costs for urgent works by placing a charge on the land until the expenses have been recovered. This charge will take effect as a local land charge.

The local planning authority (LPA) can only sell a property to recover the costs of urgent works if the charge has been registered (section 55 of the Land Registration Act 2002). Once registered, the charge takes effect as if created by a deed of charge by way of a legal mortgage within the meaning of the Law of Property Act 1925. This Act provides for the power of sale, but we have made this explicit by referring to that power in new section 55(5E) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

The method adopted in the Bill is the common means employed by local authorities to recover expenses arising from the use of statutory powers to undertake work. The provisions in the Bill mirror those in other legislation, for example the Mobile Homes (Wales) Act 2013. The LPA must exercise their powers reasonably and in a manner which is human rights compliant or face the risk of a judicial review challenge.

**2. What are your views on the proposals from stakeholders that heritage partnership agreements should be broadened to cover other heritage assets, such as historic landscapes, parks and gardens, battlefields and historic environment record entries?**

The intention of heritage partnership agreements (HPAs) is to make arrangements for the management of designated assets that require special consents — listed buildings and scheduled monuments — and to eliminate the need for repeated consent applications. Historic landscapes, parks and gardens, battlefields and other undesignated historic sites recorded in historic environment records (HERs) do not require such consents and so there is no need for them to form part of an HPA.

It is best practice to create non-statutory management plans for such undesignated assets, and they are already widely in use. If an estate includes scheduled monuments and/or listed buildings alongside undesignated assets, an HPA could be developed as a component of a wider management plan.

**3. Could you provide clarification of the grounds on which it would be reasonable for local authorities to choose not to enter into a heritage partnership agreement? Will decisions not to enter into such an agreement be subject to any form of review/appeal process?**

Participation in a HPA will be entirely voluntary and dependent upon the agreement of the parties. Due to the voluntary nature of these agreements, I do not think it is appropriate to introduce any form of review/appeal procedure. Cadw inspectors will be able to oversee and support the early development of HPAs and, if required, mentor LPAs. Best-practice guidance is also being prepared in order to assist parties in the preparation of HPAs.

**4. Will the statutory Historic Environment Records need to be available bilingually and, if so, what assessment he has made of the practical and financial implications of this?**

The historic environment records (HERs) have been developed over a period of 40 years and include over 150,000 records, the majority of which are historic archival records. It is generally accepted that historic archival records are exempt from the current Welsh language scheme. I am fully aware of the new Welsh language standards that will be introduced early next year, and I am working with the Welsh Government's compliance officer to consider the implications for the HERs.

It is recognised that the HERs will be expected to provide a bilingual service to the public as detailed under section 34(1)(c) of the Bill. The HER guidance also requires LPAs to ensure that plans and policies relating to their record are compliant with the Welsh language standards. These requirements will need to be accommodated within the existing funding arrangements and the additional funding identified within the Regulatory Impact Assessment (RIA).

**5. What will be the composition of the Advisory Panel, and how will you ensure that it reflects the diversity of those with a stake in the Welsh historic environment?**

In order for the advisory panel to be effective, it will need a wide cross-section of skills and expertise to reflect the diverse nature of the historic environment sector. The panel will also need to be kept to a manageable size in order to provide a cost-effective programme of advice.

With that in mind, I have already begun to engage with the sector to determine the most appropriate combination of skills and expertise for the panel. In recruiting the

panel, the main consideration will be to appoint members with diverse, yet balanced, skills who collectively will be able to give the Welsh Ministers appropriate advice on all aspects of the historic environment. Members will be appointed on the basis of their personal knowledge, skills and expertise and not as representatives of any particular interest groups.

**6. To what extent will third parties be able to feed into the agenda of the Advisory Panel?**

The panel will develop its own work programme based on Welsh Government and historic environment sector priorities. In setting its work programme, we would expect the panel to build upon the strategic plans for the Welsh historic environment, which will be developed on a quinquennial cycle with sector-wide input.

**7. What consideration have you given to including a reporting requirement on the Advisory Panel in the Bill in order to provide transparency and the opportunity for public scrutiny?**

The advisory panel will publish its work programme and I would expect them to report to me, and make available, their progress on delivering the work programme. However, the focus of the work of the panel needs to be on their central role and purpose which is to provide expert advice based on a robust evidence base.

If formal reporting is something that the committee believes is important to the transparency of the panel, then I am willing to consider whether there is merit in requiring a delivery report to match the cycle of the work programme.

**8. Why the power for a statutory register of historic parks and gardens is necessary, and why the legislation does not allow for statutory registers of other historic assets, such as landscapes and battlefields?**

The current non-statutory register is not a comprehensive register of historic parks and gardens of special historic interest in Wales. The present arrangement by which an owner or occupier can opt out of the register is not fair or sustainable. The statutory register will become a complete register and the Bill will ensure its longevity by making its maintenance a duty on the Welsh Ministers.

There is no need for legislation to develop registers of other historic assets, such as landscapes and battlefields. We currently have a comprehensive register of historic landscapes and are in the process of developing an inventory of battlefields. It is difficult to see what additional benefits would proceed from placing these on a statutory basis. It would not result in the inclusion of any new landscapes or battlefields or increase the protection afforded under the planning system.

**9. We have heard that an audit of the Historic Environment Records is currently underway. To what extent do you believe that the summary of predicted costs for statutory HERs included in the Bill's Explanatory Memorandum could change, depending on the results of this audit?**

I believe that the costings included in the RIA are robust and sound. They are based on the current funding arrangements for the HERs and incorporate additional funding to the tune of £80,000 to support full-time HER officers within the Welsh archaeological trusts.

A previous audit of the HERs took place in 2010. It was led by the Royal Commission on the Ancient and Historical Monuments of Wales (RCAHMW) and was verified by an external expert. There is no reason to suggest that the current audit will reveal anything unexpected. I enclose a copy of the report for your information.

**10. Will the results of the audit of Historic Environment Records be made publicly available, or available to the Committee?**

RCAHMW is overseeing the audit and it is expected that the results will be available by the end of September 2015. I shall ask RCAHMW to make them available to the committee.

**11. To what extent the provisions in the Bill relating to Historic Environment Records will improve the accuracy and consistency of the information contained in these records?**

Placing these records on a statutory footing will enhance their status and provide them with a more secure future. The statutory guidance includes the benchmarks and standards that the HERs will need to meet. RCAHMW will continue to audit the HERs to see whether they meet these benchmarks. I would expect the information contained in the HERs to continue to improve over the coming years as it has done over the past ten years since the first audit in 2005.

Furthermore, by placing the duty for the creation and maintenance of HERs on the LPAs, the Bill's provisions will give the LPAs a stake in the content and future enhancement of the HERs. This will mean that the content will become more clearly aligned with the needs of the LPAs.

**12. What consideration have you given to expanding and developing the remit of the Historical Environment Group rather than establishing the new proposed Advisory Panel, to ensure that duties are not duplicated?**

As I set out in my letter to you of 16 June, I believe that the advisory panel and the Historic Environment Group (HEG) have different roles. HEG brings together organisations that have an interest in the historic environment to encourage partnership working, stakeholder communication and coordinated action across the historic environment sector.

The panel will have a different remit. It will provide expert advice to the Welsh Ministers based on a robust evidence base. Its members will be appointed through open advertisement and competition. I do not believe that one group can deliver on both aims without making unacceptable compromises.

## Human rights considerations

**13. Could you provide further details about your reasoning in coming to this decision, including details of the factors that you considered in deciding that the correct balance had been achieved?**

**Proposed power to authorise a person to enter land without the consent of the owner in cases where a monument is in immediate danger of damage or destruction**

The Welsh Ministers will only be able to exercise this power where they know or have reason to believe that an ancient monument known or believed to be in, on or under the land is or may be at risk of imminent damage or destruction. The Welsh Ministers are under a duty to exercise their powers in accordance with the Convention on Human Rights (section 81 of the Government of Wales Act 2006). This new provision needs to be read in conjunction with general provisions in the Ancient Monuments and Archaeological Areas Act 1979 in respect of powers of entry. In particular section 44(2) states that "...a person may not in the exercise of any power of entry under this

Act demand admission as of right to any land which is occupied unless prior notice of the intended entry has been given to the occupier...not less than twenty-four hours before admission is demanded". The 1979 Act also makes general provision for compensation if any damage has been caused to land (section 46). We are content that there are adequate procedural safeguards and that the right balance has been struck between individual rights and the enhanced protection of ancient monuments that we are trying to achieve with this Bill.

### **Proposed power to enable local planning authorities to recover costs of damage to listed buildings through sale or lease of the land**

The power to recover costs through sale of the land is similar to that contained in other legislation (e.g. Mobile Homes (Wales) Act 2013). The power is intended to be used as a last resort and will follow discussions with the owner about any plans for a building. It is recognised that an owner may need a long period to put in place funding for repair and restoration works, particularly for a large or complex building.

At the same time, there are too many cases of owners deliberately neglecting buildings or, whilst well-meaning, not having the financial capacity to halt the deterioration of buildings in their care. In such cases, LPAs will be able to use these powers to save buildings important to the community or the nation.

We have considered the human rights implications. There are procedural safeguards in place and the owner can dispute the costs by making representations to the Welsh Ministers on the following grounds (section 55(4) of the 1990 Act):

- that some or all of the works were unnecessary for the preservation of the building; or
- in the case of works for affording temporary support or shelter, that the temporary arrangements have continued for an unreasonable length of time; or
- that the amount specified in the notice is unreasonable; or
- that the recovery of the amount would cause him hardship.

The Welsh Ministers will then make a determination. The owner is afforded a further opportunity to challenge the costs, by appealing the Welsh Ministers' decision to the county court.

The powers to enable LPAs to recover costs can only be used as follows (new section 55(5G) of the 1990 Act):

- where no representations are made to the Welsh Ministers within the time period set out;
- where representations are made but there is no appeal against the Welsh Ministers' determination within the time period set out;
- where an appeal is made but the decision on appeal confirms the Welsh Ministers' determination; or
- where an appeal is made but it is withdrawn.

We therefore consider that the right balance has been struck and any interference with individual rights is justified in accordance with the aims of the Bill.

#### **14. Could you expand on the factors that you considered in deciding not to consult with the public in these instances?**

The Bill's consultation provisions are triggered when the Welsh Ministers have evaluated the merits of a building or monument and are minded to designate. The aim is to give the owner of the asset, who will be directly affected by the proposed

decision, an opportunity to make representations to the Welsh Ministers. Any representations will need to relate to whether the asset meets the relevant national criteria. We do not feel it appropriate to open this process to those who will not be directly affected by the proposal to designate.

However, the public do have the opportunity at an earlier stage in the process to ask the Welsh Ministers to consider whether an asset merits designation. I am of the view that this is the most appropriate point for public participation.

## Meeting action points

### **15. Further information about the basis of your estimated costs of placing a statutory duty on local authorities to create and maintain local lists of historic assets.**

I have attached a document that sets out the estimated cost of developing lists of historic assets of special local interest in Wales. This estimate is based on the consistent approach outlined in the guidance document, *'Managing lists of historic assets of special local interest in Wales'*, which I published in draft alongside the Historic Environment (Wales) Bill.

### **16. The timetable for the report of the Expert Panel on the review of future delivery and sustainability of museums;**

I expect to receive the report of the Expert Review of Local Museum Services shortly and I will consider its recommendations over the summer. The report will be published within the next few weeks and I shall issue a Written Statement to alert Assembly Members on its appearance.

### **17. An update on the progress made against the Committee's recommendation in its 2013 report on the Welsh Government's Historic Environment Policy; that the Welsh Government should explore options to introduce a system so that, where local authority searches show that a building is listed and/or in a conservation area, the new owner is provided by the local authority with clear guidance concerning restrictions and responsibilities associated with the listed status.**

The Welsh Government accepted this recommendation and Cadw is preparing a guidance document that will focus on assisting owners to understand the significance of their buildings and their responsibilities. LPAs and other with an interest, such as conveyancing solicitors and land registrars, will have access to this document, and will be encouraged to disseminate it to new owners of listed buildings.

### **18. Details of the analysis of the eight heritage partnership agreements which have piloted in England.**

The 2006 report on the HPA pilot studies in England is referenced in the RIA for the Bill, but I attach the link here for ease of reference:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/78120/hrp\\_breport\\_eightpilotprojects.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/78120/hrp_breport_eightpilotprojects.pdf).

The costs of putting HPAs in place will vary and the pilots in England have shown that they can be expensive in the short-term, but will generally produce savings over the lifetime of the agreement, as well as delivering other benefits. HPAs for listed buildings have recently been incorporated into the law in England and we will be able to build on the experience gained there. Cadw inspectors will also be able to support the early development of such agreements and best-practice guidance is being prepared to assist parties in the preparation of HPAs.

Yours ever,

A handwritten signature in black ink, appearing to read 'Ken', with a stylized, sweeping flourish above the letters.

**Ken Skates AC / AM**

Y Dirprwy Weinidog Diwylliant, Chwaraeon a Thwristiaeth  
Deputy Minister for Culture, Sport and Tourism

## Estimated Cost of Developing Lists of Historic Assets of Special Local Interest in Wales

This summary of potential costs for the preparation of lists of historic assets of special local interest is based on:

- Experience derived from local authorities in Wales that have already prepared local lists. A particularly useful example has been the recent experience of Brecon Beacons National Park, which has been led by the conservation department but has included a significant level of public engagement
- The tasks detailed in the draft guidance document '*Managing lists of historic assets of special local interest in Wales*'.
- The experience of undertaking the Cadw listing resurvey — which was undertaken on a community-by-community basis and completed in 2005.

The draft guidance seeks to introduce a consistent approach with a clear series of tasks for establishing a local list.

1. Prepare and consult on an overarching statement of significance for the area, with community involvement.
2. Develop and consult on selection criteria informed by national designation criteria and locally specific values.
3. Survey of community / town council area to draw up an initial list.
4. Validation of candidate sites by conservation staff.
5. Notification and consultation with owner/occupiers.
6. Consultation on draft list with the public, community/town council, local interest groups and councillors.
7. Analysis of consultation and refine the list, including dealing with any objections.
8. Adoption and ratification by the local planning authority.
9. Include in the historic environment record for the area and publish on local planning authority website and link to any publicly available GIS mapping.
10. Draft local development plan policies.
11. Production of supplementary planning guidance
12. Monitor and review — link to local development plan cycle or other processes such as conservation area appraisal reviews.

### Estimated cost per LPA

Costs for tasks 1, 2 and 10–12 — **£2,657** (based on 20 days of a conservation specialist's time including supporting appropriate consultation). These costs will be one off costs for the LPA.

Cost for tasks 3–9 per community — **£3,933\*** (based on 23 days of a conservation specialist's time including community engagement and consultation with owners, etc.)

**Average cost per LPA area (based on an average of 34.76 community areas per local authority) — £139,368\*\***

**ALL-WALES TOTAL — £3,484,202 (based on a total of 869 community areas across Wales)**

\*The average cost per community during the last year of the listing resurvey in 2004 was in the region of £4,000 (at 2004 prices).

\*\*It is unlikely that the costs per community will be consistent across Wales. The costs within a rural community are likely to be significantly higher than the costs within an urban one. The number of community areas within each LPA also varies significantly and in some areas (particularly urban ones) the absence of town or community councils may make the process of community engagement more difficult.